

**EXHIBIT G**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Adv. Proc. No. 08-01789-brl  
- - - - -x  
SECURITIES INVESTOR PROTECTION CORPORATION,  
Plaintiff,  
v.  
BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,  
Defendant.  
- - - - -x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York  
  
December 14, 2010  
10:21 a.m.

B E F O R E:  
HON. BURTON R. LIFLAND  
U.S. BANKRUPTCY JUDGE

1  
2 (3207) Baker and Hostetler LLP Fifth Application for Allowance  
3 of Interim Compensation for Services Rendered and Reimbursement  
4 of Actual and Necessary Expenses Incurred.

5  
6 (3208) Attias & Levy as Special Counsel to the Trustee  
7 Application for Allowance of Interim Compensation for Services  
8 Rendered and Reimbursement of Actual and Necessary Expenses  
9 Incurred.

10  
11 (3209) Eugene F. Collins as Special Counsel to the Trustee  
12 Application for Allowance of Interim Compensation for Services  
13 Rendered and Reimbursement of Actual and Necessary Expenses.

14  
15 (3210) Hogan Lovells International LLP (Formerly Lovells LLP)  
16 as Special Counsel to the Trustee Application for Allowance of  
17 Interim Compensation for Services Rendered and Reimbursement of  
18 Actual and Necessary Expenses Incurred.

19  
20 (cc-3211) Windels Marx Lane & Mittendorf, LLP Application for  
21 Allowance of Interim Compensation for Services Rendered and  
22 Reimbursement of Actual and Necessary Expenses Incurred.

1  
2 (3212) Williams, Barristers & Attorneys as Special Counsel to  
3 the Trustee Application for Allowance of Interim Compensation  
4 for Services Rendered and Reimbursement of Actual and Necessary  
5 Expenses Incurred.

6  
7 (3213) Schiltz & Schiltz as Special Counsel Application for  
8 Interim Professional Compensation to the Trustee for Allowance  
9 of Interim Compensation for Services Rendered and Reimbursement  
10 of Actual and Necessary Expenses Incurred.

11  
12 (3214) Higgs & Johnson (Formerly Higgs Johnson Truman Bodden &  
13 Co.) as Special Counsel to the Trustee Application for  
14 Allowance of Interim Compensation for Services Rendered and  
15 Reimbursement of Actual and Necessary Expenses Incurred.

16  
17 (3215) Kugler Kandestin, LLP as Special Counsel to the Trustee  
18 Application for Allowance of Interim Compensation for Services  
19 Rendered and Reimbursement of Actual and Necessary Expenses  
20 Incurred.

21  
22 (3216) Werder Vigano as Special Counsel to the Trustee  
23 Application for Allowance of Interim Compensation for Services  
24 Rendered and Reimbursement of Actual and Necessary Expenses  
25 Incurred.

(3217) SCA Creque as Special Counsel Application for Allowance  
of Interim Compensation for Services Rendered.

Transcribed by: Esther Accardi

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A P P E A R A N C E S :

BAKER AND HOSTETLER LLP

Attorneys for Trustee  
45 Rockefeller Plaza  
New York, New York 10111

BY: DAVID J. SHEEHAN, ESQ.

IRVING H. PICARD, ESQ.

WINDELS MARX LANE & MITTENDORF, LLP

Special Counsel to SIPA Trustee and Chapter 7 Trustee  
156 West 56th Street  
New York, New York 10019

BY: ALAN NISSELSO, ESQ.

REGINA GRIFFIN, ESQ.

SECURITIES INVESTOR PROTECTION CORPORATION

805 15th Street, N.W., Suite 800  
Washington, D.C. 20005

BY: KEVIN H. BELL, ESQ.

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A P P E A R A N C E S : (continued)

BECKER & POLIAKOFF

45 Broadway, 11th Floor

New York, New York 10006

BY: HELEN DAVIS CHAITMAN, ESQ.

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## P R O C E E D I N G S

THE CLERK: SIPC v. BLMIS.

MR. SHEEHAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. SHEEHAN: David Sheehan from Baker and Hostetler on behalf of Irving Picard; the trustee for Bernard L. Madoff Securities Inc.

We have this morning, Your Honor, a number of applications in connection with interim fee allowances. As I have done in the past, what I would like to do is approach those that were not objected to and save the last, that which was objected to. Which is, of course, the application of Mr. Picard, as trustee, and his counsel, Baker and Hostetler.

With the Court's permission, I'd like to proceed.

THE COURT: Go ahead.

MR. SHEEHAN: The -- As Your Honor well knows, and as the press is dutifully reported of late, there is a great deal going on in the world involving Mr. Madoff, and a good deal of that is occurring not in the United States, but elsewhere. Around the globe; in Europe as well as in the Caribbean.

And as a result, what the trustee has done through the course of the last two years is retain counsel in each of those jurisdictions to assist him in the endeavors that he engages in to recover funds and return them to the victims.

Each of those attorneys has applied for compensation,



1 and none of those are objected to. And what I'd like to  
2 briefly do, Your Honor, is just name the counsel, the  
3 jurisdiction which they're operating, and a brief summary of  
4 what they've done for the record, if I may.

5 THE COURT: Go ahead.

6 MR. SHEEHAN: The first is Attias & Levy. This is a  
7 matter that Your Honor has -- is very familiar with, and that's  
8 in Gibraltar involving the Vizcaya matter.

9 The local counsel there has been of extremely  
10 important to us in terms of locking up to seventy-five million  
11 dollars that resides in the courts there. And is soon to be  
12 turned over to the court here, subject to this Court's  
13 jurisdiction, and ultimately subject to a trial before Your  
14 Honor with regard to our claims there.

15 The outcome there to a very large extent was assisted  
16 by our local counsel and clearly we support their application.

17 Next application is by special counsel; Eugene F.  
18 Collins. And that's the law firm we retained in Ireland.

19 Ireland was a jurisdiction through which much of the  
20 Madoff money passed. A good deal of it still resides there.  
21 Thema is one of the major funds that we sued that is -- resides  
22 there, as well as others that are located within that  
23 jurisdiction in terms of race.

24 Eugene F. Collins has been supportive of us almost  
25 from the inception of the case, and has done a good deal of

1 work to assist us in pursuing those assets.

2 Next firm is Hogan & Lovells. Hogan Lovells, as Your  
3 Honor will recall, was initially Lovells. Retained by the  
4 trustee at the outset of the case to assist us in London in  
5 connection with the company owned by Mr. Madoff; Madoff  
6 Securities International, or MSIL.

7 Lovells unfortunately developed a conflict; this is  
8 their final application for services that were rendered prior  
9 to the conflict occurring. The conflict occurred as a result  
10 of the merger of Hogan & Lovells. And, unfortunately, the  
11 Hogan firm had matters that we did not feel comfortable in  
12 waiving the conflict on behalf of the trustee, so we retained  
13 new counsel in London to handle those matters.

14 The next firm is Williams, Barristers. Williams  
15 Barristers is in Bermuda. As I noted earlier, there are funds  
16 throughout the Caribbean, Bermuda being one of them. A  
17 principal fund there is Kingate. Kingate has 100 million  
18 dollars in the bank, which we have secured, and is waiting the  
19 outcome of litigation, which will take place here before Your  
20 Honor in connection with litigation that we've instituted.

21 We've also taken through Williams, Barristers those  
22 steps that are necessary to preserve that asset pending the  
23 outcome of our litigation here, and the potential enforcement  
24 of that judgment in Bermuda.

25 Williams, Barristers has assisted us in all those

1 endeavors.

2 Next firm is Schiltz & Schiltz. Schiltz & Schiltz is  
3 located in Luxembourg. Luxembourg is the location of Luxalpha,  
4 a major fund that has been sued by the trust for significant  
5 dollars, and is one of the principal funds that we are  
6 pursuing, both here in the United States and potentially in  
7 Europe as well.

8 Schiltz & Schiltz is with us since the beginning of  
9 the case. Has been invaluable in terms of the structure of  
10 that litigation.

11 Next firm is Higgs & Johnson. Higgs & Johnson is  
12 located in the Cayman Islands. As Your Honor will recall, we  
13 have instituted suit in the Cayman Islands against Harley  
14 International. This is a fund that owes the estate one billion  
15 dollars. And our counsel, Higgs & Johnson, has been of great  
16 assistance to us throughout the course of the many hearings  
17 that have been held down there in connection with a great deal  
18 of activity associated with Harley.

19 As with all these cases, there are liquidators being  
20 appointed by local jurisdictions, as is the case with Harley.  
21 And we deal in that jurisdiction on a fairly regular basis with  
22 that liquidator. And Higgs & Johnson represents us in that  
23 effort.

24 Then the next firm is Kugler & Kandestin. Kugler &  
25 Kandestin is a firm located in Canada. There are no funds

1 there, but a good deal of documentation passed through a  
2 variety of sources there. We've had to engage in a good deal  
3 of discovery using 2004 in connection with Kugler's assistance  
4 there, and we have achieved a good deal of document production  
5 in connection with numerous funds, and has been of great  
6 assistance to us.

7 Then there is Werder Vigano. Werder Vigano is in  
8 Switzerland. As Your Honor well knows, there are a number of  
9 Swiss banking connections associated with this case. Most  
10 prominently perhaps is Union Bancaire Privee. There's a  
11 settlement pending before Your Honor with regard to that very  
12 action. And there are other actions associated with Swiss  
13 banks.

14 This firm, Werder, has been of great assistance to us  
15 in looking into the extra territoriality issues, as well as the  
16 international jurisdictional issues associated with pursuing  
17 claims against Swiss banks, which is no mean feat has everyone  
18 knows.

19 Then last is SCA Creque. This is in BVI. British  
20 Virgin Islands was the home of many of the funds created by Mr.  
21 Madoff. And Defender being one of them that we sued along with  
22 a number of others. That litigation is ongoing here before  
23 Your Honor, and Creque has been of assistance with regard to  
24 all of those efforts as well.

25 So I would submit, Your Honor, all of those firms I've

1 just named, there is no opposition, and I submit that their  
2 applications should be approved.

3 MR. BELL: Your Honor, Kevin Bell on behalf of the  
4 Securities Investor Protection Corporation.

5 I note, as does Mr. Sheehan, that Hogan Lovells is an  
6 application for final compensation and payment of the holdback  
7 that had been held back on the prior orders of the Court. And  
8 that all others for interim. SIPC supports the entry of the  
9 court order that allows the compensation requests for all the  
10 applications, including the payment of Hogan Lovells final  
11 compensation, including the prior holdback.

12 THE COURT: Does anyone want to be heard?

13 (No response)

14 THE COURT: There's no response. The applications are  
15 granted.

16 MR. BELL: Thank you, Your Honor.

17 THE COURT: The next application is for special  
18 counsel to the trustee; Windels Marx. And in the courtroom  
19 today is the Chapter 7 trustee, Mr. Nisselson and his counsel;  
20 Regina Griffin.

21 And as I've said before, Your Honor, and I'm very  
22 happy to report it again, The support and work from Windels  
23 Marx has been nothing short of superb. The work that they have  
24 done has been first rate. It has been relentless in the sense  
25 that the hours that they've put in and vast amount of hard work

1 that went into the work, not only associated -- I should report  
2 this to Your Honor, not only associated with the cases that are  
3 before you Talon Air involving the aircraft of Mr. Madoff, the  
4 Madoff corporations, such as CRIMEX, Madoff Energy, the Madoff  
5 family funds, all of which are being handled through Mr.  
6 Nisselson with Ms. Griffin and the firm.

7 But, also, as Your Honor knows, over the last several  
8 weeks, we've had tremendous work associated with putting  
9 together a number of complaints. And that firm came in and  
10 assisted us in that effort as well.

11 And I know the trustee and myself are very supportive  
12 of their application here today and would ask that it be  
13 approved.

14 THE COURT: Does anyone want to be heard?

15 MR. BELL: Your Honor, again, SIPC has submitted its  
16 application and supports the entry of the court order allowing  
17 the application for interim compensation by Windels Marx.

18 THE COURT: The application is granted.

19 MR. SHEEHAN: Your Honor, at this time --

20 THE COURT: Typically in the cases well known to the  
21 Court I do appear and fill in some of the so-called gaps in the  
22 context of litigation. And it does provide for a very smooth  
23 transition between the various firms here.

24 MR. SHEEHAN: Your Honor, the last application is that  
25 of the trustee and his counsel; Baker Hostetler. At this point

1 I'll turn over the podium, as it were, to Mr. Picard; the  
2 trustee.

3 MR. PICARD: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. PICARD: In this portion of the fifth application  
6 for interim compensation covers the four-month period ending  
7 September 30th. I seek the Court's approval for a \$684,659.25  
8 in fees, of which 581,960 dollars represents eighty-five  
9 percent.

10 In addition, I seek 100,000 dollars of the holdback  
11 and disbursements of \$954.41.

12 SIPC has filed its recommendation pursuant to Section  
13 78eee(b)(5)(C) of SIPA in favor of my portion of the  
14 application as well as in favor of Baker & Hostetler's portion.

15 As I've indicated in prior applications I agreed with  
16 SIPC at the outset of the proceeding to discount my rates, as  
17 did the firm, by ten percent.

18 None of the fee payments, either to me, Baker, or any  
19 of the other counsel you heard about today are being paid out  
20 of any of the recoveries that we get. All those recoveries are  
21 for the benefit of the allowed claimants. I also stand by my  
22 prior pronouncements, if you will, that SIPC does not have a  
23 reasonable expectation of recoupment of its administrative  
24 advances.

25 Without getting into the specifics of allocation of

1 property, which we hope we will have an application to the  
2 Court in the next couple of months, I do want to address an  
3 objection as well as news stories which focus on the current  
4 allowed claims of approximately six billion dollars. And I  
5 emphasize the word "current."

6 From that number the objection, as well as the news  
7 stories, jump to the conclusion that we will have sufficient  
8 funds to pay allowed claimants in full, and then to pay money  
9 back to SIPC to cover its administrative advances. I submit  
10 that their premise is wrong. They haven't done their homework.  
11 If they had they would know that pursuant to Bankruptcy Code  
12 Section 502(d) in connection with a number of adversary  
13 complaints that we have filed, we have objected to the  
14 allowance of significant claims on the grounds that the  
15 defendants have not repaid to us the amounts that they received  
16 as preferences, as a major example.

17 In fact, to the extent that we are successful in  
18 recovering from those parties, the allowed -- the defendant to  
19 the extent that he, she or it pays back will be able to  
20 increase its claim. So while we will be getting in more money,  
21 at the same time the allowed claims will increase. That is  
22 what happens in the typical bankruptcy case, and that's what  
23 will happen here.

24 And, of course, we're in litigation. Many cases get  
25 settled, and I don't assume, and I don't think anyone should



1 assume, that we're going to recover every single dollar that we  
2 seek. Although, we hope and expect that we will recover  
3 significant dollars.

4 During the four-month period I expended 922.1 hours.  
5 In addition to the ten percent discount on that time, I wrote  
6 off approximately 133,000 dollars in the exercise of good  
7 billing practice.

8 As set forth in the application, especially Exhibit  
9 C -- Exhibit B, excuse me, the significant portion of my time  
10 was spent in connection with claims review, avoidance action,  
11 case administration, the trustee's investigation, some  
12 bankruptcy court litigation, and communications and meetings  
13 with the U.S. Attorney's office.

14 As I said at the last interim fee hearing, this Ponzi  
15 scheme was of longstanding, vast in scope and geographical  
16 reach. Our complaints showed that.

17 Work done during the four-month period on which we're  
18 here before you today, as well as in earlier periods, are now  
19 beginning to show. Recoveries and the sale of the market-  
20 making business are now up over 1.5 billion dollars. We have  
21 hearings scheduled for approval of two settlements, totaling in  
22 excess of one billion dollars. And we have several other  
23 settlements in the pipeline and hope to be able to announce  
24 those in the very near future.

25 As of last Friday we have determined 96.1 percent of

1 the 16,394 claims. That's approximately fifteen percent more  
2 than when we were here in September.

3 As I indicated, we have asserted 502(d) counts against  
4 a number of claimants; approximately a little bit more than  
5 100. And we had claims from 10,400 plus claimants who don't  
6 have accounts, that we had denied.

7 Based on where we are we today have 643 claims  
8 remaining to be determined. And we hope to have most of that  
9 done by the end of the year. These are the claims, of course,  
10 that require extra work, review and, in many cases, inquiry of  
11 the customer.

12 In connection with the adversary proceeding complaints  
13 that we have filed, I've continued the hardship program that  
14 was first introduced in connection with the claims process.  
15 Based on the earlier hardship applications with which we had  
16 agreed, and information submitted during the past few months by  
17 persons claiming hardship, including at least one of opposing  
18 counsel's clients, we have refrained from bringing at least 200  
19 actions. We are continuing to receive inquiries and  
20 applications, which we review on a regular basis. The hardship  
21 program has a special place on the trustee's website. I  
22 encourage persons who believe that they have a financial  
23 hardship, significant medical issues, family issues, and the  
24 like, to complete and submit an application.

25 We can't possibly know the issue that people are

1 facing, unless they bring them to our attention. If we concur  
2 with the application, as I have stated publicly on numerous  
3 occasions, we will dismiss the adversary proceeding.

4 Based on where I expect we will be in the next several  
5 months, I anticipate, as I indicated at the outset, that we  
6 will be scheduling a hearing before Your Honor in the near  
7 future on a motion for allocation of property, all of which, in  
8 my view, should go to the customer fund, and present a proposal  
9 for an interim distribution.

10 Based on the record of the proceedings, I ask Your  
11 Honor to deny the objection and award the requested amount of  
12 my time, the 100,000 of deferred and the disbursements. I'd be  
13 pleased to answer any questions if you have them.

14 THE COURT: I have none.

15 MR. PICARD: Thank you, Your Honor. Mr. Sheehan will  
16 address some of the other matters.

17 MR. SHEEHAN: Your Honor, as is well known by you and  
18 has been widely reported in the press, we've been at this  
19 endeavor for approximately two years. As a famous English  
20 statesman once said, we are now at the -- not at the beginning  
21 of the end, but the end of the beginning.

22 What we had before us is a significant array of  
23 litigation. And in support of the fee application what I'd  
24 briefly like to do this morning is to reflect upon the past.  
25 Because in a good way it definitely reveals the future.

1           The future being many, many course -- many litigations  
2     against a variety of different financial institutions and FEDER  
3     funds. They're all matter of record now, they've all been  
4     filed. Widely reported that they constitute in excess of fifty  
5     billion dollars.

6           The goal here of the trustee; the goal is to return  
7     100 percent of the money to those victims. That is the goal  
8     and that is what we are going to strive mightily to achieve.  
9     We made some significant strides just in the last couple of  
10    weeks, as Mr. Picard just reported. In the next several weeks  
11    there will be even more significant strides made and reported  
12    to this Court, to the public at large, as to significant  
13    settlements going towards that goal of 100 percent return.

14           Will we achieve that? I don't know.

15           Litigation and all of assisted to associated with it,  
16    make it difficult to predict that. But it's a worthy goal, an  
17    admirable one, and one that the trustee and his counsel worked  
18    with arduously everyday since the day of their appointment.

19           I think it's revealed by looking at the nature of the  
20    cases that we've put together. Yes, we have sued individuals,  
21    that is true, but only those individuals who got other people's  
22    money. A fact often forgot no matter how often I repeat it, is  
23    that this is a Ponzi scheme. And those who got other people's  
24    money really shouldn't keep it. Bankruptcy is equality, and  
25    what we are going to do is try to achieve that.

1 As the trustee points out, we will be as careful and  
2 deliberate as we can not to pursue those who can ill afford to  
3 return the money of others. We understand that. And as  
4 demonstrated by the fact that we've already walked away from  
5 several hundred lawsuits we will undoubtedly walk away from  
6 hundreds of others.

7 But the end of the day, the goal here is, there are  
8 victims out there. People who did not get their money back;  
9 hundreds of them, millions and millions of dollars. Our goal  
10 is to follow this litigation that we've put together to make  
11 sure that happens, that they get their money back.

12 And I think if you reflect upon the work that we've  
13 done, not just in the four-month period, but in the two years  
14 leading up to today, what you will see is a steady course  
15 that's been followed by the trustee and his counsel.  
16 Conducting a worldwide investigation. This is not something  
17 that takes a matter of hours, or days, or weeks, but months and  
18 years in order to achieve the outcome that we've achieved here  
19 today.

20 To measure that by one minor matter or two, and to  
21 suggest that through that prism one can then evaluate the work  
22 that was done by the trustee and his counsel, is to be absurd.  
23 That makes no sense. One has to look at the vast panoply of  
24 work achieved by the trustee in the last two years, and his  
25 counsel to assess the value of that work.

1           Anyone who has read any of the complaints that are  
2     free to be read that have not been sealed, whether that be  
3     large portions of HSBC, large portions of the RICO complaint,  
4     demonstrate that this was a vast worldwide fraud that Mr.  
5     Madoff wasn't just an aberration, that it just wasn't an  
6     affinity crime. What he engaged in was being part of the  
7     fabric of the financial institutions of this country. That he  
8     represented a financial instrument that they will utilize and  
9     try to take advantage of. And in so doing took away the  
10    millions and millions of dollars of innocent people. And the  
11    only way -- the only way that's ever going to come back to them  
12    is through the auspices of this trustee and the counsel that he  
13    has retained to follow that money and to get it back.

14           That's what this application represents. Your Honor  
15    has before you detailed time records. Yes, they're not shown  
16    to the public. My adversary seems to suggest that there's  
17    something untoward with regard to that.

18           One would think that as an experienced lawyer she  
19    would recognize that there are in those time records, because  
20    in order to let you, and SIPC and those who review these  
21    records, know exactly what the trustee is doing. There are  
22    thought processes contained within those records. There are  
23    strategies, there is work product. It cannot be shown to the  
24    public. These litigations are significant, complex, difficult.  
25    Are we supposed to play all of our cards in front of all of

1       them? They're not doing that for us, Your Honor. Obviously,  
2       we shouldn't. The answer is simple and plain.

3               So, therefore, when we make this application to Your  
4       Honor, we make it to you with full disclosure. With all the  
5       years of experience that you bring to it to look at it, and as  
6       does SIPC in looking at it as well.

7               It's important to note that the industry supports this  
8       effort. This is funded not by the customers, not by some  
9       taxpayer, but by the industry. The industry funds SIPC. The  
10      industry here is paying the trustee and his counsel to chase  
11      this money and to bring it back. Why? Because SIPA was  
12      instituted to bring the money back to those customers. And my  
13      adversary suggests that we've limited it in a wrongful way.

14             That's not for today, that's for the Second Circuit at  
15      this point, Your Honor already having ruled on that topic. And  
16      the law being, quite frankly, clear, what do we do when we're  
17      in the situation where there are victims, where it's very  
18      difficult? Can we get subjective, or do we do what we do as  
19      lawyers, we follow the law. That's what we did here, that's  
20      what the trustee has done, and he has reached out to Your Honor  
21      and to the circuit and to other courts, all of them asking them  
22      to apply the law and this is what we are doing here in terms of  
23      pursuing these dollars and returning them to the customers.

24             So I would submit, Your Honor, that I have not gotten  
25      into any of the detail. I don't think I have to. We have

1 complaints against seven major banks. Citibank, Natixis; each  
2 of these representing 500 million dollars, a billion dollars.  
3 Against JPMorgan Chase; the bank of Mr. Madoff, over six  
4 billion dollars is being claimed. If you go through that  
5 complaint, which Your Honor can, but the public can't at this  
6 point, you see all the detail that went into all the work to  
7 pull all of that together. To tell that story in a way that is  
8 coherent and powerful. And at the end of the day I believe the  
9 trustee will be successful in his efforts there. And so on and  
10 so forth with regard to HSBC and all of the other complaints  
11 that we've brought, and also against all the FEDER funds.

12 This was a monumental effort culminating in the  
13 filings that took place over the last six to eight weeks. We  
14 believe that that time was well spent. Well spent in terms of  
15 the effort that we're bringing on behalf of the customers. But  
16 well spent on behalf of restoring to the financial community  
17 belief in the fact that ultimately -- ultimately the truth will  
18 be known as to exactly how this architect of fraud, this  
19 mastermind of Mr. Madoff, how it all happened. And we will  
20 spread that upon the record, which is also part of our  
21 responsibility.

22 So based upon that, Your Honor, I respectfully submit  
23 that our application for fees and allowances here on behalf of  
24 Baker, be approved.

25 MR. BELL: Your Honor, Kevin Bell on behalf of SIPC.



1 Tomorrow begins the 105th week since SIPC filed its  
2 application to begin the liquidation of the debtor under the  
3 auspices of the Securities Investor Protection Corporation to  
4 bring relief to all the victims.

5 Today's New York Times had an article about an issue  
6 that came before the Court last month, about people buying the  
7 victims' claims. And it ended with the -- what I want to start  
8 with, which is Mr. Ross's idea that there is hope that there  
9 will be payment of his claim. Your Honor, that is what SIPC's  
10 all about. SIPC strives to make sure that the trustee and  
11 counsel use their efforts to pursue the wrongdoers and to bring  
12 those funds back into the control of the trustee so that goal,  
13 that hope that Mr. Ross has can be fulfilled.

14 At this point in time that cannot happen. And I would  
15 like to address the provision of the statute that is in  
16 question today, raised by the opposition. Namely, that in case  
17 in which the allowances will be paid by SIPC without reasonable  
18 expectation of recoupment thereof, and there is no difference  
19 between the amounts requested and the amounts recommended by  
20 SIPC, the Court shall award the amounts recommended by SIPC.  
21 At this moment in time, there is no reasonable expectation of  
22 such a recoupment.

23 I have been involved in cases where there has been  
24 full payment -- repayment of SIPC. It is my fondest  
25 expectation that that would occur. It is the expectation of

1 the SIPC leadership that that would occur. But at this moment  
2 in time there is no reasonable expectation, there is a hope.

3 The trustee has advised that there's no reasonable  
4 expectation. And SIPC, on examination, agrees with the trustee  
5 at this moment. Mr. Picard and Mr. Sheehan have talked about  
6 the future, about litigation, and we all, having been involved  
7 in litigation over many years as lawyers, know that our hopes  
8 sometimes don't get fulfilled in litigation because something  
9 may happen.

10 The -- I would call the Court's attention to one of  
11 the exhibits attached to the opposition to this application.  
12 It is a document this Court referred to in its decision on the  
13 motion to dismiss by Merkin. And that is the letter to  
14 Congressman Kanjorski dated September 7th.

15 And in that you will see the president of SIPC  
16 reported to the committee that has oversight over SIPC that  
17 there is a very strong possibility that the allowed claims  
18 would be somewhere around 17.3 billion dollars. The trustee  
19 has added a footnote to that this morning, and anybody who  
20 peruses the complaints filed will see that they are replete  
21 with counts that assert 502(d) of the Bankruptcy Code, because  
22 those defendants who are also claimants for protection under  
23 the SIPA statute received preferences. And it is clear in  
24 SIPC's view that that is a number that is the operative number  
25 in this liquidation proceeding.

1           So at some point in time when the trustee is able to  
2   recover over twenty billion dollars maybe we would be at a  
3   point where there would be no reasonable expectation. But as  
4   the trustee has reported, he has 1.5 billion in hand, another  
5   approximately a billion dollars that is subject to motions for  
6   this Court's approval on two settlements. And the SIPC is very  
7   well aware that that doesn't equal the twenty billion dollars  
8   or so that are reported to Congress it expects that under the  
9   methodology this Court approved, would be the allowed amount of  
10   customer claims.

11           So let me just sum up by saying that SIPC has filed  
12   its recommendation in support of the interim application of  
13   trustee and counsel. It supports the entry of a court order  
14   that would allow all applications by -- allow the application  
15   by the trustee and counsel, including the payment of a portion  
16   of the large holdback that has -- that this Court has  
17   recognized in its prior orders in the sum of 100,000 dollars  
18   for the trustee, and 3.4 million for Baker and Hostetler.

19           And I would say, Your Honor, SIPC is very aware of  
20   everything that the trustee is doing. It has reviewed  
21   intensively each of the applications that's before the Court  
22   and all the invoices that are part of it. And it would  
23   strongly urge the Court to enter the order submitted by the  
24   trustee and counsel on their application.

25           Thank you, Your Honor.

1 (Pause)

2 MS. CHAITMAN: Good morning, Your Honor. As you know  
3 I represent several hundred investors of Madoff.

4 And many of those investors who had allowed claims  
5 have been forced to sell their claims, because they couldn't  
6 wait any longer to get the money that they needed to live on,  
7 having lost everything they own in Madoff.

8 This is a case in which there is a great deal which is  
9 undisclosed. And I think that's very regrettable. And I think  
10 what was appropriate in response to my objection was a full  
11 disclosure of the economics of this case. And, unfortunately,  
12 we haven't received it.

13 The facts set forth in the September 7th letter of Mr.  
14 Harback to Mr. Kanjorski and Mr. Garrett, reveal facts that had  
15 never been disclosed publicly to my knowledge. And they  
16 include the fact that, according to that letter, there is  
17 approximately seventeen billion in net investments in Mr.  
18 Madoff's companies. Therefore, presumably, the total claims  
19 would be seventeen billion dollars.

20 However, in a situation where Mr. Picard has a  
21 statutory duty to promptly allow claims and deliver substitute  
22 securities to investors, after two years he has only allowed  
23 5.8 billion dollars of the seventeen billion in possible  
24 claims. And he hasn't told you today why that is. He says  
25 well, it takes a long time to go through the records. There's

1 an explanation, but we haven't heard it. It may very well be  
2 that Mr. Picard never intends to allow those seventeen billion  
3 in claims, so that the total claims in this case, all together,  
4 will be 5.8 billion dollars.

5 And if we assume that that's true for a second, then  
6 it's virtually inconceivable that there won't be enough money  
7 to pay all the allowed claims in full and to fully reimburse  
8 SIPC, in which event SIPC and the trustee should not be relying  
9 on the provision of SIPA to which Mr. Bell just referred Your  
10 Honor.

11 Now, we've heard Mr. Bell say that he's got setoff  
12 claims; that Mr. Picard has asserted setoff claims against the  
13 presumably the seventeen billion dollars in claimants, whose  
14 claims have not yet been allowed. But as Your Honor knows, Mr.  
15 Picard has sued for the difference between what people took out  
16 and what they put in. So let's assume that I had put in a  
17 million dollars and taken out two million dollars, then Mr.  
18 Picard would have sued me for a million dollars. If he wins,  
19 and I pay back the million dollars, I don't have an allowed  
20 claim, I'm not recognized as a claimant because I had a zero  
21 net investment.

22 So I don't really see how the mystery can be solved  
23 simply by Mr. Bell's explanation, that some of the complaints  
24 that have been filed have 502(d) claims in them. And we  
25 shouldn't be in this case, Your Honor. We shouldn't be feeling

1 around in the dark for the facts about this. Those of my  
2 clients who are still holding on and haven't been forced to  
3 sell their claims have a right to know what the reasonable  
4 prospect of payment is, and whether they're going to get  
5 significantly more than the thirty cents on the dollar, or  
6 thirty-three cents on the dollar that Wall Street is now  
7 offering people.

8 That's why I filed the objection, Your Honor. And I  
9 believe that the Court should not allow any further fees until  
10 there's a full disclosure of the real economics of this  
11 proceeding.

12 Thank you.

13 THE COURT: Anyone else want to be heard?

14 MR. SHEEHAN: If could briefly, Your Honor.

15 THE COURT: Sure.

16 MR. SHEEHAN: I think there is been -- there has been  
17 full disclosure. It does require a good deal of putting things  
18 together. Maybe not even a good deal, it's relatively  
19 straightforward.

20 We know that FEDER funds are net losers, said that  
21 since day one. Net losers, however, receive preferences and  
22 fraudulent conveyances. Net losers who, therefore, will be  
23 sued for billions of dollars. And at the end of the day,  
24 either by settlement or by the judgment of this case, they will  
25 pay that money back. And when they do, as Mr. Picard pointed

1 out, the amount of their claim will be enhanced.

2 Those seventeen billion dollars, twenty -- it's in  
3 that range, seventeen to eighteen billion dollars of FEDER Fund  
4 claims are there. They're net losers, they're not winners.  
5 Not somebody who got all their money back. So when we sue all  
6 those people what are we doing? We're seeking to do exactly  
7 what the statute tells us to do, that equity is equality. That  
8 FEDER Fund simply cannot come out ahead of other people simply  
9 because it's a loser. It has to give it back and participate  
10 in a pro rata distribution. It's as plain, quite frankly, as  
11 the nose on your face, if you actually looked at it clearly.  
12 And that is is that you've got approximately seventeen to  
13 eighteen billion dollars of claims filed by FEDER Funds, that  
14 eventually will be determined and presumably allowed, except to  
15 the extent that if the conduct of that FEDER Fund was so  
16 egregious, so outrageous this trustee seeks to subordinate that  
17 claim. Then, in that event, the amount of the denominator may,  
18 indeed, be reduced.

19 But in the more likely event that what we prove here  
20 is basically a lack of good faith, inquiry notice, that which  
21 we have alleged, it will not be subordination so much as a  
22 payment to the trustee, an increase in the amount of the claim,  
23 so, indeed, the numerator will be increased, but so will the  
24 denominator.

25 I believe that's very plan, very available to anyone

1 on the website, doesn't take a good deal of arithmetic to  
2 figure it out. And I think somebody with bankruptcy experience  
3 and knowledge would understand that.

4 So I don't think there's any mystery here, Your Honor,  
5 none. Nothing being hidden, nothing being held back, it's all  
6 out there for everyone to see.

7 Thank you, Your Honor.

8 THE COURT: Thank you. Does anyone else want to be  
9 heard?

10 (No response)

11 THE COURT: Well, it's interesting in that the focus  
12 of this hearing on fee applications has turned away from the  
13 actual fee applications, and more toward a disagreement  
14 necessarily on the part of the -- or maybe not necessarily on  
15 the part of the objectors, as to the impact of the net equity  
16 determination, because that drives an awful lot of why the  
17 parties are for or against.

18 The statute that I have before me with respect to  
19 allocation of fees is clear. One time Congress gave this Court  
20 some discretion, but then the original SIPA legislation was  
21 changed and modified, so that the recommendation of SIPA is a  
22 commandment upon the Court. The statute says that the court  
23 shall approve if SIPA recommends the fee structure.

24 The only out is that there should not be a reasonable  
25 expectation of recoupment, and that, essentially, is the horse



1 that the objectors ride on here today to support their  
2 objection.

3 I agree with Mr. Bell, that at this juncture there is  
4 no reasonable expectation of recoupment. That reasonable  
5 expectation, even if this Court was to give it some credence,  
6 is so highly speculative it's really rank speculation.  
7 Especially where the litigation that's pending before this  
8 Court involves very well financed adversaries able to push back  
9 with the timing, conclusion and income results, all of which  
10 are not susceptible to any clear estimation.

11 So I cannot make that leap that one would say on a  
12 very rosy estimate, that there is a reasonable expectation that  
13 SIPC will be recouped for the amount of fees that are being  
14 laid out.

15 Again, the emphasis is that these fees,  
16 notwithstanding the objection, are not coming from any of the  
17 victims, and they're not coming from the estate. And under all  
18 of the circumstances, and notwithstanding the statutory command  
19 that this Court shall approve the fees, I am very well aware of  
20 the Herculean effort being utilized in the litigation arena to  
21 recoup funds for the benefit of the victims, and  
22 notwithstanding how the Court of Appeals, or ultimately the  
23 Supreme Court, rules. And in that regard I would hope that  
24 there'd be some swift at disposition, so that monies that are  
25 coming in in hand are able to be distributed rather quickly.

1 I commend the trustee and counsel's suggestion that  
2 there may be a sufficient funds for distribution early next  
3 year. That will be most helpful.

4 Just to give you a bird's eye view of the impact of  
5 all the litigation that's being described in front of me here,  
6 last week as a delegate to the United Nations in Austria, the  
7 whole Austrian financial public community was up in arms and  
8 discussing the trustee's litigation against the banks and  
9 parties in Austria. It is quite clear that the litigation is  
10 having a very substantial impact. And that does not come  
11 without a lot of investment in lawyer and trustee time and  
12 effort.

13 Of course, none of that litigation, to the extent that  
14 it was publicized in Austria, has had a current nexus to the  
15 application before me today, although it may very well have.

16 But, in any event, I do not find that the objectors  
17 have made any strong point with respect to objecting to the  
18 fees that have been requested here today. The objections are  
19 overruled. And I will entertain an order approving them --  
20 approving the fees.

21 MR. SHEEHAN: May I approach, Your Honor?

22 THE COURT: Yes.

23 (Pause)

24 THE COURT: I have approved the order.

25 MR. SHEEHAN: Thank you very much, Your Honor. Good

1 morning, Your Honor.

2 MS. CHAITMAN: Thank you, Your Honor.

3 THE COURT: Thank you, Ms. Chaitman.

4 (Whereupon these proceedings were concluded at 11:08 a.m.)

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I N D E X

R U L I N G S

| DESCRIPTION  | PAGE | LINE |
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| Application to approve fees for foreign<br>counsel granted                             | 12   | 15   |
| Application to approve fees of<br>Windels Marx granted                                 | 13   | 18   |
| Application to approve fees of<br>Baker and Hostetler approved,<br>objection overruled | 33   | 19   |

C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

**Esther  
Accardi**

Digitally signed by Esther Accardi  
DN: cn=Esther Accardi, o, ou,  
email=digital1@veritext.com,  
c=US  
Date: 2010.12.16 14:16:16 -05'00'

ESTHER ACCARDI (CET\*\*D-485)

AAERT Certified Electronic Transcriber

Veritext

200 Old Country Road

Suite 580

Mineola, New York 11501

Date: December 16, 2010